IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2985 OF 2005

Shri Prakash Phulchand Porwal	...	Petitioner
Vs.		
Sou. Vimal Jayprakash Oswal & Anr.	...	Respondents

Mr. A.L. Kumar for the petitioner.

Mr. Y.S. Bhate for respondent 1.

CORAM: SMT. RANJANA DESAI, J.

DATED: 3RD MAY, 2005.

P.C.:-

1. The petitioner is original defendant 1 - tenant in this writ petition. He has challenged the concurrent findings of facts returned by the courts below that the suit premises are required by the landlady for her own personal use and that the tenant has carried out permanent construction in the suit premises without permission of the landlady.

2. I have heard, at considerable length, Mr. Kumar the learned counsel for the petitioner. He strenuously contended that the concurrent findings are perverse and deserve to be set aside. He submitted that the landlady has stated that her husband is not earning. However, her

husband has not stepped in the witness box. He, therefore, submitted that it was an error on the part of the courts below to come to the conclusion that the landlady required the suit premises because her husband is not earning and she wants to carry out some business in the suit premises. I am unable to agree with the learned counsel. The case of the landlady is that she wants to start tailoring business in the suit premises. It is well settled that the requirement of the landlady need not be a dire necessity and she is the best judge of her requirement. Merely because the plaintiff's husband has not stepped in the witness box, her testimony cannot be discarded. The fact that plaintiff Vimal has completed her tailoring course is evident from certificate Ex-35. She has a young son. There is no reason to disbelieve her statement on oath that her husband is not earning. Defendant 1 has a jewellery shop. The financial condition of defendant 1 appears to be sound. He also has another flat at Kalyan. Therefore, the trial court and the lower appellate court cannot be faulted for holding against the tenant on this ground.

3. The eastern door is permanently closed by defendant 1 by constructing a wall from inside by using stones, bricks and cement. The western wall was demolished and in its place a new door was erected. Photographs of permanent construction are on record. Closing of one door permanently without obtaining written permission

from the landlady would squarely fall within the ambit of section 13(1)(b) of the Rent Act. The learned counsel for the plaintiff submitted that on account of closer of the door, the durability of the building is not diminished. In my opinion, the permanent closer of one door will definitely diminish the value of the suit premises. It is not possible to justify this construction as being one for the beneficial enjoyment of the suit premises. In any case, before carrying out major construction, the tenant should have taken written prior permission of the landlady. Since that is not taken, both the courts are right in holding in favour of the landlady. In view of this, no interference is necessary with the impugned judgment and order. Writ petition is dismissed.

4. At this stage, the learned counsel for the petitioner states that some time may be given to the petitioner to vacate the suit premises. The learned counsel for respondent 1 objects. In the circumstances of the case, the petitioner is given six month's time to vacate the suit premises on the petitioner and all adult members in his family filing usual undertakings in this court within a period of four weeks from today.

(SMT. RANJANA DESAI, J.)